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SUBJECT: PAKISTAN 2008 301 REVIEW

REF: A) STATE 09475 B) 07 ISLAMABAD 5103

¶1. (SBU) Summary: Post recommends that Pakistan be elevated to the Priority Watch List (PWL) at the conclusion of the 301 Review process. Although some progress was made on data protection in the fall, forward movement seems to have stalled. The combination of lack of progress on data protection and no significant progress in other areas leads us to recommend elevation of Pakistan to Priority Watch List status. End Summary.

Data Protection

¶2. (SBU) Pakistan first promised to pass TRIPS-consistent data protection legislation in 2006. While there was some progress on legislation in the fall of 2007, the amendment to the 1976 Drugs Act is now stalled in disagreements between the Ministry of Health (MOH), Ministry of Law (MOL) and various industry stakeholders over the definition of "new chemical entity." In early January, the Ministry of Law returned the draft amendments to the stakeholders to revisit the definition of "new chemical entity" with instructions to hold another stakeholders meeting (domestic and foreign pharmaceutical companies) to discuss the definition.

¶3. (SBU) Despite the Embassy's frequent urging to hold the stakeholders' meeting as soon as possible and finalize the legislation, the meeting tentatively set for March 1 has not yet taken place and no firm date has been set. A complicating factor is that Pakistan is in the last days of a caretaker government. The Embassy continues to press for finalization of data protection legislation.

¶4. (SBU) Pakistan's foreign pharmaceutical companies continue to believe that imperfect data protection is better than none at all, and are reassured that they will have additional opportunities to strengthen data protection through the issuance of implementing regulations and renewal of the ordinance every four months. They have been showing remarkable flexibility. An ordinance may be amended prior to renewal. The domestic pharmaceutical industry is well-connected politically. At the same time, the European embassies are not advocating for their companies, despite our overtures to the appropriate embassies.

FIA seeking regulatory changes

¶5. (SBU) The Federal Investigative Agency (FIA) IPR enforcement unit is seeking regulatory changes from the Ministry of Interior to pursue trademark piracy. These changes, which FIA hopes will be finalized in the next few months, will allow FIA to pursue trademark piracy. Trademark piracy is rampant in Pakistan. Private sector companies, most prominently Levi Strauss, have already expressed

interest in cooperating with FIA to pursue trademark pirates.

IPO still ineffective

¶6. (SBU) We continue to work proactively with Pakistan's Intellectual Property Organization and hope to include them in the planning of the Embassy awareness seminar, now set for May 11 in Lahore. The IPO Director General has distanced himself from the data protection debate when the IPO should have encouraged the Ministry of Health to finalize the amendments to the 1976 Drugs Act so that Pakistan may meet its TRIPS commitments. The new Chairperson has been consumed by his other professional responsibilities, and the Board has still not met. There is no progress on institution of a patent linkage system.

Comment

¶7. (SBU) Comment: Given the lack of progress on data protection, we recommend that Pakistan be elevated to the priority watch list. We continue to actively pursue opportunities for training, public awareness, and media outreach. Once the new government is formed, we will highlight the importance of a robust intellectual property rights regime and continued enforcement for the growth of Pakistan's knowledge-based economy and protection of its artistic patrimony.
End comment.

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